

*In this article, Serdar Mehmet, a Solicitor in IBB's Residential Development Team looks at the impact of Assets of Community Value on housebuilders. As the residential development market shows real signs of growth, housebuilders are finding that their plans are being thwarted. Developers need to be aware of the implications of a site being or which could be classified as an Asset of Community Value.*

# ASSETS OF COMMUNITY VALUE



**The undercroft at London's Southbank, listed as an ACV**

Photo credit: Nigel Tufnell

## Background

The Localism Act 2011 (the "Act") came into force on 1st November 2011, and the Assets of Community Value (England) Regulations 2012 (the "Regulations"), which flesh out the provisions contained in the Act, came into force on 21st September 2012. These fairly recent pieces of legislation define how land may be classified as an asset of community value ("ACV").

## Listing

The legislation is designed to give communities the power to play a more active role in the way that local services are provided. In particular, the Regulations give a local community time to bid and raise the funds to buy an ACV that is up for sale.

So what sort of property qualifies as an ACV? Since the legislation came into force, over 100 pubs have been registered as ACVs. Libraries and football stadia have also been listed. Even the undercroft used as a skate park at London's Southbank has been listed (*see image*). And the decision to list an asset is not affected by whether an asset is owned privately or publicly.

For land or a building to be classified as an ACV, the following must be satisfied:

(1) its primary function must be to further the social well being or social interest of a local community and that it will realistically continue to do so (whether or not in the same way as before) or,

(2) at some time in its recent past, it furthered the social wellbeing or social interest of a local community and that it could realistically do so within the next five years (whether or not in the same way as before).

In order for the asset to be listed on the local authority's register, a community interest group (such as a local Parish council) must apply to the local authority for the asset to be listed.

It is fairly simple to find out if an asset is listed on the local authority's register, as its status as an ACV should be registered as a local land charge. The title to the property will also show a corresponding entry by way of restriction (if registered).

Unless a landowner disagrees with its listing and successfully appeals, an asset will remain on the register for five years once it has been listed as an ACV. After this period, if the criteria for listing the asset still apply, it may be re-listed.

#### Sale

The legislation prevents a wide range of disposals including a freehold disposal with vacant possession, a qualifying leasehold disposal with vacant possession and an option to buy. It would not however apply to the sale of a freehold property which is subject to a tenancy. Nor does the legislation apply to the grant of a lease for less than 25 years or to an option or right of first refusal that was entered into before the asset was listed as an ACV. An exception may apply if only part of the land is listed.

#### Notification and moratoria

The major impact on a property owner of an ACV listing is that once land is registered as an ACV, the owner must advise the local authority of the intention to sell, which then leads to a two-stage moratorium being imposed on the sale.

Upon the local authority receiving notification, it informs the group that

nominated the property as an ACV and publicises the proposed sale to the community. The community group then has a six-week period from the date the local authority received the owner's notification (the "interim moratorium") to express an interest to buy. If no expression of interest is received, the owner is free to sell the land on the open market during an 18-month period, which begins on the date of the owner's notification to sell (the "protection period"). If an expression of interest is made within the six-week interim moratorium, a six-month period (from receipt by the council of the owner's notification) is imposed preventing the owner from selling the property to any party other than to the bidding community interest group (the "full moratorium"). Only after the expiry of the full moratorium, is the owner (again) free to sell the land on the open market during the protection period.

If the owner does not achieve a sale on the open market during the protection period, further moratoria may be imposed. However, the owner is not obliged to sell to the community interest group. During the full moratorium period, the owner can still market the property and negotiate sales on the open market, but cannot exchange contracts or enter into a binding contract to exchange contracts, except to a community interest group. The moratorium therefore provides "breathing space" to allow a community interest group to put together a viable bid and/or finance.

#### Consequences

Any non-compliant sale during the moratoria periods is void.

#### Going forward

An ACV listing need not signify the end of a proposed deal. In any disposal or acquisition of property which is (or could be) listed, early advice should be obtained to minimise the risk of breaching the legislative procedure.

#### ACVs near you

##### Home County boroughs (Berkshire, Surrey, Kent and Essex) and West London boroughs

Kings Meadow Pool, RG1  
Garth Hall, RG7  
Crown Public House, SL6  
Shinfield Royal British Legion Clubhouse, RG2  
Rowledge Village Hall, GU10  
Haslemere Police Station, GU27  
The Coop Store, CT15  
Lilypie Café, ME17  
Artwise Youth and Arts Centre, CT11  
Hadlow Library, TN11  
Messing Primary School, CO5  
St Johns Ambulance Hall, CO7  
Tabard Pub and Theatre, W4  
London Lighthouse, W11  
Kensal Rise Library, NW10

In total Surrey, Essex, Berkshire, Kent boroughs and the seven West London boroughs have 62 ACV listings between them.



*If you would like to discuss the issues raised by this note, please contact:*

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